

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**THE LAKE AT TWELVE OAKS HOMES ASSOCIATION, INC., A MISSOURI NOT-
FOR-PROFIT CORPORATION,
RESPONDENT**

vs.

**MATTHEW SCOTT HAUSMAN, INDIVIDUALLY AND STACEY JO HAUSMAN,
TRUSTEE OF THE HAUSMAN REVOCABLE TRUST DATED 5-5-1999,
APPELLANTS**

vs.

DOCKET NUMBER WD78516

DATE: APRIL 19, 2016

Appeal from:

The Circuit Court of Buchanan County, Missouri
The Honorable Randall R. Jackson, Judge

Appellate Judges:

Division One: Victor C. Howard, Presiding Judge, Gary D. Witt, Judge and Zel Fischer, Special Judge

Attorneys:

John F. Burns, for Respondent

Stephen G. Jeffery, for Appellant

MISSOURI APPELLATE COURT OPINION SUMMARY

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THE LAKE AT TWELVE OAKS HOMES ASSOCIATION, INC., A MISSOURI NOT-FOR-PROFIT CORPORATION, RESPONDENT

v.

**MATTHEW SCOTT HAUSMAN, INDIVIDUALLY AND STACEY D. HAUSMAN,
TRUSTEE OF THE HAUSMAN REVOCABLE TRUST DATED 5-5-1999,
APPELLANTS**

WD78516

Buchanan County, Missouri

Before Division One: Victor C. Howard, Presiding Judge, Gary D. Witt, Judge and Zel Fischer, Special Judge

Matthew S. Hausman and Stacey D. Hausman, Trustee of the Hausman Revocable Trust dated 5-5-1999, appeal the judgment of the trial court in favor of The Lake at Twelve Oaks Homes Association, Inc. ordering the removal of part of the solar energy system erected on their premises. They raise five points on appeal contending that the judgment is not supported by substantial evidence, is against the weight of the evidence, and erroneously declares and applies the law. They also assert that the trial court erred in excluding additional evidence offered as part of their motion for new trial. The judgment is affirmed. The Association's motion for attorney fees on appeal is sustained, and the case is remanded.

AFFIRMED. REMANDED.

Division One holds:

(1) Where the Hausmans' solar energy system comprised of five solar arrays covering large portions of the roofs and almost the entire side of the garage and materially changed the exterior appearance of the property, the system fell within the definition of structure as used in the homes association's restrictive covenants and required approval of the homes association's design review committee (DRC) before their installation on the property.

(2) Where the DRC's disapproval of two of the Hausmans' arrays was not based entirely on noncompliance with the homes association's Solar Guidelines governing the permissible location of arrays but also on other factors such as character of the subdivision, individual homeowner complaints, compatibility with surrounding properties, and impact on the value of surrounding properties, the trial court did not err in excluding additional evidence offered as part of the Hausmans' motion for new trial on the permissible location issue.

(3) Substantial and competent evidence supported the trial court's finding that the DRC's decision disapproving two of the Hausmans' solar arrays was reasonable to preserve the beauty and harmony of the subdivision and to enhance the value of the property within it.

(4) Where the special ordinance enacting the City's solar ordinances specified that the solar ordinances shall be in full force and effect from the date of passage, the solar ordinances operate prospectively and do not apply to the Hausmans' system, which was installed and inspected by the City a year prior to enactment of the ordinances.

(5) Where the homes association's covenants provided the association's right to enforce its covenants and obtain monetary judgments including attorneys fees, the homes association is entitled to reasonable fees relating to this action to enjoin a violation of the covenants. The case is remanded to the trial court to determine the amount of attorneys fees.

Opinion by: Victor C. Howard, Judge

Date: April 19, 2016

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